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14 *Attorneys for Defendant Capital One Services, LLC*

15 **UNITED STATES DISTRICT COURT**

16 **FOR THE DISTRICT OF NEVADA**

17 NATASHA PORTEOUS on behalf of herself
18 and all others similarly situated,

19 Plaintiffs,

20 vs.

21 CAPITAL ONE SERVICES, LLC and DOES
22 1 through 50, inclusive,

23 Defendant(s).

24 Case No.

25 [District Court Case No. A-17-762625-C]

26 **NOTICE OF REMOVAL OF ACTION**

27 TO: **THE CLERK, UNITED STATES DISTRICT COURT FOR THE DISTRICT OF**
28 **NEVADA:**

29 PLEASE TAKE NOTICE that under 28 U.S.C. §§ 1441 and 1446, Capital One Services,
30 LLC (“Defendant”)¹ by and through its undersigned counsel, hereby files this Notice of Removal
31 of Action (“Notice”) of this case from the Eighth Judicial District Court of the State of Nevada, in
32 which it is now pending, to the United States District Court for the District of Nevada. Federal
33 question jurisdiction of this Court is invoked under 28 U.S.C. § 1331. Diversity jurisdiction of this
34 Court is also invoked under 28 U.S.C. § 1332, as well as supplemental jurisdiction over state law
35 claims under 28 U.S.C. § 1337.

36 ¹ Plaintiff improperly names Capital One Services, LLC in this action. The proper party defendant
37 in this action is Capital One Services II, LLC.

1 **I. State Court Action**

2 Plaintiff Natasha Porteous (“Plaintiff”) filed this action against Defendant in the Eighth
 3 Judicial District Court of the State of Nevada on October 5, 2017, Case No. A-17-762625-C (the
 4 “State Court Action”). (*See* a true and correct copy of the Plaintiff’s Collective Action and Class
 5 Action Complaint against Defendant (“Complaint”) attached hereto as **Exhibit A.**) Plaintiff filed
 6 an Initial Appearance Fee Disclosure (NRS Chapter 19) on October 5, 2017. (*See* a true and
 7 correct copy of the Initial Appearance Fee Disclosure attached hereto as **Exhibit B.**) Copies of the
 8 Summons and Complaint were served on the registered agent for Defendant on October 26, 2017.
 9 (*See* true and correct copies of the Notice of Service of Process attached hereto as **Exhibit C.**)

10 The State Court Action generally alleges that Defendant required Plaintiff and all
 11 employees in Defendant’s call center department in Nevada to engage in pre-shift and post-shift
 12 work activities off the clock and without compensation. (*See generally, Exhibit A.*) Thus,
 13 Plaintiff filed this suit alleging the following causes of action: (1) failure to pay wages in violation
 14 of the federal Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201, *et seq.*; (2) failure to pay
 15 overtime wages in violation of the FLSA, 29 U.S.C. § 207; (3) failure to pay the correct overtime
 16 rate in violation of the FLSA, 29 U.S.C. § 207(e); (4) failure to pay wages for all hours worked in
 17 violation of NRS 608.140 and 608.016; (5) failure to pay minimum wages in violation of the
 18 Nevada Constitution; (6) failure to pay overtime wages in violation of NRS 608.140 and 608.018;
 19 (7) failure to pay all wages due and owing upon termination pursuant to NRS 608.140 and
 20 608.020-050; and (8) breach of contract. (*See id.*)

21 **II. This Court Has Federal Question Jurisdiction Under 28 U.S.C. § 1331**

22 Plaintiff’s first, second and third causes of action allege violations of the FLSA;
 23 specifically, failure to pay wages, failure to pay overtime wages and failure to pay the correct
 24 overtime rate. (*See Exhibit A, ¶¶ 21-36.*)

25 FLSA is a federal law. Accordingly, Plaintiff’s Complaint presents federal question
 26 jurisdiction under 28 U.S.C. § 1331.

27 ...

28 ...

1 **III. This Court Also Has Diversity Jurisdiction Under 28 U.S.C. § 1332**

2 **A. Diversity of Citizenship**

3 Plaintiff is and was a resident of the State of Nevada during the relevant time period. (See
4 **Exhibit A**, ¶ 4.) Defendant is a Delaware limited liability company with its principal place of
5 business in McLean, Virginia. Accordingly, for purposes of diversity jurisdiction, Plaintiff is a
6 citizen of Nevada and Defendant is a citizen of both Delaware and Virginia.

7 **B. Amount in Controversy**

8 Plaintiff claims the amount in controversy exceeds \$10,000 (*see Exhibit A*, ¶ 1.) Plaintiff
9 seeks Rule 23 treatment of all those similarly situated to Plaintiff (*see Exhibit A*, ¶ 19 (D)) and
10 alleges there are in excess of 700 class members (*see Exhibit A*, ¶ 20). Thus, although Defendant
11 denies that Plaintiff is entitled to any remedy, the aggregate amount sought by Plaintiff and those
12 similarly situated to Plaintiff in her Complaint will put at issue an amount that likely exceeds
13 \$5,000,000.00.

14 **IV. This Court Has Supplemental Jurisdiction Over Plaintiff's Remaining State Law**
15 **Claims Under 28 U.S.C. § 1367**

16 Plaintiff's Complaint also alleges a breach of contract claim and several Nevada state law
17 wage claims, including Defendant's alleged failure (i) to pay wages for all hours worked in
18 violation of NRS 608.140 and 608.016; (ii) to pay minimum wages in violation of the Nevada
19 Constitution; (iii) to pay overtime wages in violation of NRS 608.140 and 608.018; (iv) to pay all
20 wages due and owing upon termination pursuant to NRS 608.140 and 608.020-050. These state
21 law claims arise from the same alleged occurrences and/or common nucleus of operative facts that
22 underlie Plaintiff's federal FLSA claims. The Complaint makes clear that each of Plaintiff's
23 claims, including the state law claims, are related to allegations of Defendant's alleged failure to
24 pay Plaintiff and other employees for pre-shift and post-shift work performed off the clock. This
25 Court, therefore, has supplemental jurisdiction over Plaintiff's remaining state law claims pursuant
26 to 28 U.S.C. § 1367.

27 **V. This Removal Is Timely**

28 Plaintiff served Defendant on October 26, 2017. As this Notice is being filed on

1 November 15, 2016, less than 30 calendar days after the Complaint was served on Defendant, the
2 removal is timely.

3 **VI. Requirements For Removal**

4 Defendant has met all other requirements for removal as follows:

5 A. Defendant attached to this Notice, as **Exhibit A** through **Exhibit C**, copies of “all
6 process, pleadings and orders” served upon it pursuant to 28 U.S.C. § 1446(a).

7 B. Defendant has also concurrently filed a copy of this Notice in the Eighth Judicial
8 District Court for the State of Nevada.

9 C. Defendant has served a copy of this Notice upon Plaintiff’s counsel.

10 D. All named Defendants have been served and consent to the removal of Plaintiff’s
11 action.

12 E. This Notice is executed pursuant to Federal Rule of Civil Procedure 11.

13 DATED this 15th day of November, 2017.

14 OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.

15 /s/ Anthony L. Martin

16 Anthony L. Martin

17 Nevada Bar No. 8177

18 Tullio J. Marchionne

19 Nevada Bar No. 4684

20 Wells Fargo Tower

21 Suite 1500

22 3800 Howard Hughes Parkway

23 Las Vegas, NV 89169

24 *Attorneys for Defendant Capital One Services, LLC*

CERTIFICATE OF SERVICE

I hereby certify that I electronically transmitted the foregoing **NOTICE OF REMOVAL OF ACTION** to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrant:

Mark R. Thierman
Joshua D. Buck
Leah L. Jones

Pursuant to FRCP 5(b), I hereby further certify that service of the foregoing document was also made by depositing a true and correct copy of same for mailing, first class mail, postage prepaid thereon, at Las Vegas, Nevada, to the following:

Mark R. Thierman
Joshua D. Buck
Leah L. Jones
Thierman Buck LLP
7287 Lakeside Drive
Reno, NV 89511

*Attorneys for Plaintiffs Natasha Porteous
on behalf of herself and all others
similarly situated*

DATED this 15th day of November, 2017.

/s/ Carol Rojas

**AN EMPLOYEE OF OGLETREE, DEAKINS,
NASH, SMOAK & STEWART, P.C.**